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TRUST #1003-061387

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IN THE
COURT OF APPEALS OF INDIANA

Windy City Acquisitions, LLC,
Appellant-Petitioner,

v.

Estate of Leland Simms, et al,

and

Brentwood Equitable Trust #1003-061387,

and Green Leaf Enterprises, LLC,
Appellees-Respondents.

June 24, 2021

Court of Appeals Case No. 20A-TP-2347

Appeal from the Lake Circuit Court

The Honorable Lisa A. Berdine, Magistrate

Trial Court Cause No. 45C01-1912-TP-2354

Tavitas, Judge.

Case Summary

[1] Windy City Acquisitions, LLC ("Windy City") appeals the trial court's denial of its petition for a tax deed for property owned by Leland Simms, who is deceased. The trial court found that Windy City was not entitled to a tax deed for the property because the notices provided by Windy City and its predecessor did not substantially comply with Indiana Code Section 6-1.1-25-4.5 and Indiana Code Section 6-1.1-25-4.6. Concluding that Windy City substantially complied with the notice statutes, we reverse and remand.

Issue

[2] Windy City raises one issue, which we restate as whether the trial court properly found that the tax sale certificate holder failed to substantially comply with Indiana Code Section 6-1.1-25-4.5 and Indiana Code Section 6-1.1-25-4.6 when it provided the required notices.

Facts

[3] Leland Simms ("Leland") owned a residence located at 2865 Dallas Street in Gary ("Dallas Street Property"). Leland also owned the adjacent ten-foot-wide strip of vacant land, which has an official address of 5820-36 W. 29th Avenue ("Vacant Lot"). The Vacant Lot appears to be part of the yard of the Dallas Street Property and is immediately adjacent to the residence on the right side if looking at the residence from the street. The Dallas Street Property containing the residence and the Vacant Lot are surrounded by a chain link fence. The relationship of the properties is shown in Figure 1 below.

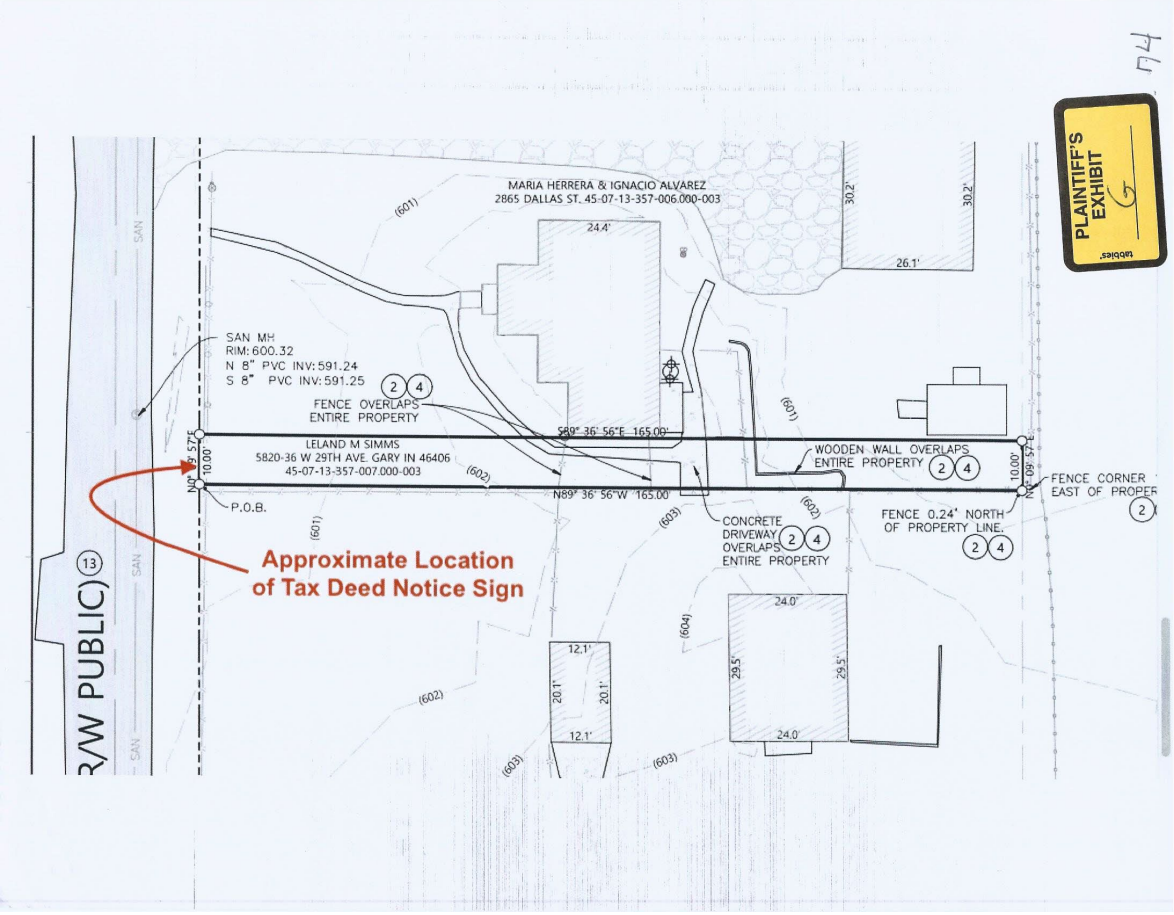

Figure 1

[4] Leland died in January 2013, and his estate was probated in 2013. The Dallas Street Property was sold in 2013.[1] The Vacant Lot, however, was never transferred out of Leland's name. The Lake County Assessor's office still lists Leland as the owner of the Vacant Lot and lists Leland's address as 2865 Dallas Street in Gary. After Leland's death, Leland's brother, Lloyd Simms, arranged for Leland's mail to be forwarded to Lloyd's address on Burr Street in Gary. Lloyd, however, never opened Leland's mail and merely threw the mail in the trash.

[5] Property taxes related to the Vacant Lot in the amount of $2,870.92 were not paid, and the Lake County Commissioners obtained a tax sale certificate on September 11, 2018. On May 22, 2019, Alexander Petrovski purchased an "Assignment of Commissioner Owned Tax Sale Certificate" for the Vacant Lot.

[6] Petrovski's counsel, Attorney Kevin Marshall ("Attorney Marshall"), had a title search for the Vacant Lot performed. Attorney Marshall was unaware that Leland was deceased. Through the title search, however, Attorney Marshall discovered an additional address for Leland on Burr Street in Gary, which is Lloyd's residence.

[7] According to Attorney Marshall, on August 1, 2019, he sent the notice of redemption required by Indiana Code Section 6-1.1-25-4.5 ("4.5 Notice") to

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[1] Windy City then purchased the Dallas Street Property in December 2019.

Leland at the Dallas Street Property and Burr Street addresses by first-class mail and by certified mail.[2] The post office documentation provided by Attorney Marshall, however, does not indicate that Attorney Marshall sent the 4.5 Notice to Leland at the Burr Street address by either certified mail or first-class mail. The 4.5 Notice sent to Leland at the Dallas Street Property address by certified mail was returned to Attorney Marshall as "attempted not known unable to forward." Exhibit Vol. p. 25. The 4.5 Notice sent to the Dallas Street Property by first-class mail was not returned. Petrovski also posted the notice in front of the chain link fence along Dallas Street on August 13, 2019, as identified in Plaintiff's Exhibit G. The redemption period expired on September 19, 2019, without the property being redeemed.

[8] Rich Zeigler, authorized agent of Windy City, spoke with Lloyd in Lloyd's driveway at the Burr Street address sometime after the redemption period expired and learned that Leland was deceased. On December 11, 2019, Petrovski assigned the tax sale certificate to Windy City. Windy City then filed a verified petition for a tax deed. On December 17, 2019, Windy City sent the notice of filing for tax deed required by Indiana Code Section 6-1.1-25-4.6 ("4.6 Notice") to Leland at the Vacant Lot's address, the Dallas Street Property address, and the Burr Street address by first-class mail and by certified mail. The certified mail sent to the Vacant Lot's address was returned as "no such street unable to forward"; the certified mail sent to the Dallas Street Property

[2] Marshall also provided notice to two attorneys not relevant to this appeal.

address was unclaimed; and the notice sent to the Burr Street address was returned as "insufficient address unable to forward." *Id.* at 47, 55, 65. Also, on December 20, 2019, Windy City posted the notice in front of the chain link fence along Dallas Street, slightly to the right of the residence.

[9] Windy City then re-sent the notices by certified mail. Certified mail sent to the property address and the certified mail sent to the Dallas Street address were returned as "no such number unable to forward." *Id.* at 48, 52. On January 18, 2020, however, Lloyd received and signed for the certified mail that was addressed to Leland and sent to the Burr Street address.

[10] Brentwood Equitable Trust No. 1003-0613837 ("Brentwood")[3], successor to Lloyd, filed an objection to the issuance of the tax deed. Brentwood argued that Lloyd was an heir of Leland and that Lloyd was entitled to proper notice regarding the tax sale by the Lake County Auditor, the Lake County Treasurer, the Lake County Commissioners, Petrovski, and Windy City, which he did not receive.

[11] A bench trial was held in October 2020. Among other evidence, Windy City presented testimony from a surveyor that, in his opinion, the notice signs were placed on the Vacant Lot. Lloyd, however, testified that the fence was not on the Vacant Lot. Lloyd saw a notice posted after October 2019, but he thought

[3] Lloyd executed a quitclaim deed to Brentwood in March 2020.

the notices were posted on the Dallas Street Property and "didn't even stop to read it." Tr. Vol. I p. 136.

[12] Windy City argued that Lloyd did not have a substantial interest in the vacant lot and, to the extent Lloyd was entitled to notice as an heir or potential heir, Lloyd received notice. Further, Windy City argued that it properly served the notices and that service on the Burr Street address was merely "extra" notice and not required. *Id.* at 148.

[13] Brentwood argued that the 4.5 Notice was required to be sent to the Burr Street address and that there is no record that Petrovski's 4.5 Notice was sent to that address. Brentwood further argued that, based on Lloyd's testimony, the notices were posted on the Dallas Street Property, rather than the Vacant Lot. According to Brentwood, the information that Leland was deceased was readily accessible on the internet.

[14] After the bench trial, the trial court issued, sua sponte, findings of fact and conclusions thereon denying Windy City's petition for a tax deed and granting Brentwood's objection. The trial court found:

> 69. Failure to send the 4.5 Notice to the Burr Street address results in the failure to meet the "practicalities and peculiarities" standard of [*McBain v. Hamilton Cty.,* 744 N.E.2d 984 (Ind. Ct. App. 2001),] and the [*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706 (1983),] standard since Petrovski (original tax sale purchaser) had the Burr Street address readily available to him yet failed to successfully utilize it. This error is compounded by the fact that when [Windy City] sent the 4.6 Notice to the Burr Street address, Lloyd Simms (brother of

Leland M. Simms) received it and followed up on its purpose with Attorney Anthony Walker.

* * * * *

74. No evidence was presented to demonstrate that Lloyd Simms (brother of Leland M. Simms) had actual notice of the tax sale proceeding until after the redemption period had expired.

75. The Court finds Lloyd Simms (brother of Leland M. Simms) was not entitled to notice under Indiana Law, as a person with a substantial property interest of public record and therefore was not entitled to notice of the tax sale proceeding for the subject property.

* * * * *

76. The Court finds that Lloyd Simms (brother of Leland M. Simms) did not have actual notice of the tax sale prior to the tax sale redemption period expiring.

77. Both Petrovski (original tax sale purchaser) and [Windy City] testified that they posted the 4.5 and 4.6 Notices on a signpost in front of a vacant piece of land, which they understood to be the subject property. Further, [Windy City] argued that the only address that they needed to send notice to was 2865 Dallas Street and that when the mail came back as undeliverable, pursuant to *Jones v. Flowers*, [547 U.S. 220, 126 S. Ct. 1708 (2006)], the additional reasonable step that they took was to post the notice on a Vacant parcel of land. The Court questions the level of "desire" of [Windy City] or Petrovski in performing this method of noticing when they could have simply posted the notice on the home located at 2865 Dallas Street, the intended recipient of the notice, which was adjacent to the subject property

in question. It would have taken no additional time to post notice of the tax sale proceeding on the residence at which they believed Leland M. Simms to be receiving mail.

78. The Court heard testimony from Alexander Petrovski (original tax sale purchaser) that he posted the 4.5 Notice of Sale and testimony from Rich Ziegler of Windy City Acquisitions, LLC that he posted the 4.6 Notice. As in [*Marion County Auditor v. Sawmill Creek*, 964 N.E.2d 213, 221 (Ind. 2012)], when noticing is done on a vacant parcel of land, it is considered suspicious noticing. The Indiana Supreme Court in *Indiana Land Tr. Co. v. XL Inv. Properties, LLC*, [155 N.E.3d 1177, 1190 (Ind. 2020),] also observed that posting notice on bare, unimproved land was not practical. The same is true in this case.

79. The Court heard testimony that on December 16, 2019 Windy City Acquisitions, LLC purchased 2865 Dallas Street and then on December 20, 2019 Rich Zeigler posted the 4.6 Notice on property which was identified as 2865 Dallas Street. The Court finds that any posting on property already owned by the party seeking title to property is not an additional reasonable step.

80. Based on the foregoing, the Court finds [Windy City] failed to substantially comply with and give adequate notice, pursuant to I.C. 6-1.1-25-4.5 and the Due Process Clause of the United States Constitution, to Leland M. Simms and any party that has a substantial property interest of public record in the subject property.

81. The Court finds [Windy City] failed to substantially comply with and give adequate notice, pursuant to I.C. 6-1.1-25-4.6 and the Due Process Clause of the United States Constitution, to Leland M. Simms and any party who has a substantial property interest of public record in the subject property.

Appellant's App. Vol. II pp. 21-23. Windy City now appeals.

Analysis

[15] Windy City challenges the trial court's finding that it failed to substantially comply with Indiana Code Section 6-1.1-25-4.5 and Indiana Code Section 6-1.1-25-4.6 when it provided the required notices. The trial court entered, sua sponte, findings of fact and conclusions thereon. "Where a trial court enters findings sua sponte, the appellate court reviews issues covered by the findings with a two-tiered standard of review that asks whether the evidence supports the findings, and whether the findings support the judgment." *Steele-Giri v. Steele*, 51 N.E.3d 119, 123 (Ind. 2016). "A finding is clearly erroneous when there are no facts or inferences drawn therefrom which support it." *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). We neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We consider only the evidence and reasonable inferences drawn therefrom that support the findings. *Id.* We review the trial court's legal conclusions de novo. *Id.* "Any issue not covered by the findings is reviewed under the general judgment standard, meaning a reviewing court should affirm based on any legal theory supported by the evidence." *Steele-Giri*, 51 N.E.3d at 123-24.

[16] We note that several of the trial court's findings conflict with other findings, which has hampered our review. Finding 69 indicates that the failure to send the 4.5 notice to Lloyd's address on Burr Street resulted in improper notice. Finding 75, however, states that Lloyd was not entitled to notice. Further, in

Findings 74 and 76, the trial court found that Lloyd did not receive "actual" notice.

[17] Additionally, we find conflicts in findings 77, 78, and 79. Finding 77 states in relevant part: "The Court questions the level of 'desire' of Petrovski or [Windy City] in performing this method of noticing when they could have simply posted the notice on the home located at 2865 Dallas Street, the intended recipient of the notice, which was adjacent to the subject property in question." Appellant's App. Vol. II p. 22. But then, in finding 79, the trial court found that "Zeigler posted the 4.6 Notice on property which was identified as 2865 Dallas Street. The Court finds that any posting on property already owned by the party seeking title to property is not an additional reasonable step." *Id.*

[18] The trial court is the finder of facts; given the conflicting findings here, though, we conclude that the trial court's findings are clearly erroneous. Given the conflicting findings, we are unable to say that the "findings support the judgment." *Steele-Giri*, 51 N.E.3d at 123. These findings affect the trial court's conclusions of law, which we review de novo. *Perkinson*, 989 N.E.2d at 761.

[19] "'A tax sale is purely a statutory creation, and material compliance with each step of the statute is required.'" *Iemma v. JP Morgan Chase Bank, N.A.*, 992 N.E.2d 732, 738 (Ind. Ct. App. 2013) (quoting *Nieto v. Kezy*, 846 N.E.2d 327, 337 (Ind. Ct. App. 2006)). "While a tax deed creates a presumption that a tax sale and all of the steps leading to the issuance of the tax deed are proper, the presumption may be rebutted by affirmative evidence to the contrary." *Id.* "An

order to issue a tax deed will be given if the court finds that the notices have been provided pursuant to the statutes." *Id.* "[T]itle conveyed by a tax deed may be defeated if the notices were not in substantial compliance with the manner prescribed" by the pertinent statutes. *Id.* Whether a notice "'substantially complied' with statutory requirements, though a 'fact-sensitive determination,' is a question of law." *Indiana Land Tr. Co. v. XL Inv. Properties, LLC*, 155 N.E.3d 1177, 1190 (Ind. 2020) (quoting *Collier v. Prater*, 544 N.E.2d 497, 499 (Ind. 1989)).

[20] > The General Assembly has codified the procedures and requirements to conduct a tax sale when an owner of real property becomes delinquent on property taxes. *See* Ind. Code § 6-1.1-24 *et seq*. Under the present statutory scheme, there are certain notice requirements that must be met before the property is sold. I.C. § 6-1.1-24-4. If notice is given and no property owner objects or steps forward to contest the sale, the property is subject to sale at a public auction. I.C. §§ 6-1.1-24-4.7, -5. After the tax sale, there is a redemption period during which a person may redeem the property for a certain sum of money. *See* I.C. § 6-1.1-25 *et seq*. If the property is not redeemed, the purchasing party may file a petition for the tax deed to the real property. I.C. § 6-1.1-25-4.6.

Id. at 1187.

[21] The statutory provisions related to tax sales require that the property owner be provided with three notices: (1) Indiana Code Section 6-1.1-24-4 (the county auditor's notice of tax sale); (2) Indiana Code Section 6-1.1-25-4.5 (notice of the right of redemption or 4.5 Notice); and Indiana Code Section 6-1.1-25-4.6

(notice of petition for tax deed or 4.6 Notice). Only the 4.5 Notice and the 4.6 Notice are at issue here.

[22] We also note that the Due Process Clause of the Fourteenth Amendment requires "that before it institutes an action to sell a delinquent property, 'a State must provide notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* at 1183 (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795, 103 S. Ct. 2706, 2709 (1983)). "Put differently, a party that has a legally protected property interest in a particular parcel is 'entitled to notice reasonably calculated to apprise him of a pending tax sale.'" *Id.* (quoting *Mennonite Bd. of Missions*, 462 U.S. at 798, 103 S. Ct. at 2711).

[23] Our Supreme Court has noted that the United States Supreme Court held: (1) the Due Process Clause of the Fourteenth Amendment requires the government to provide "notice and opportunity for hearing appropriate to the nature of the case"; (2) "'actual notice' is not required by due process. Rather, due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections'"; and (3) "to assess the adequacy of a particular form of notice, a Court must balance the interest of the State against the individual interest sought to be protected by the Fourteenth Amendment." *Id.* at 1184 (quoting *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708 (2006)) (internal citations omitted). "So 'when notice is a person's due . . . [t]he means employed must be such as one desirous of actually informing the

absentee might reasonably adopt to accomplish it.'" *Id.* (quoting *Flowers*, 547 U.S. 220, 126 S. Ct. 1708) (internal citations omitted).

[24] For example, where a certified letter is returned, the "reasonable additional steps" that must be taken depend upon what the new information reveals. *Id.* at 1185. Where the certified letter is unclaimed, "one viable option" is to "send another letter via regular mail." *Id.* "Another practical option would have been for the government to post notice on the door of the property." *Id.* A search of the phone book or other governmental records to find a new address is not, however, required. *Id.*

I. 4.5 Notice

[25] Windy City challenges the trial court's determination that Petrovski failed to substantially comply with the 4.5 Notice requirements. Indiana Code Section 6-1.1-25-4.5 provides in relevant part:

> (c) A purchaser of a certificate of sale under IC 6-1.1-24-6.1 is entitled to a tax deed to the property for which the certificate was sold only if:
>
> > (1) the redemption period specified in section 4(c) of this chapter has expired;
> >
> > (2) the property has not been redeemed within the period of redemption specified in section 4(c) of this chapter; and
> >
> > (3) not later than ninety (90) days after the date of sale of the certificate of sale under IC 6-1.1-24, *the purchaser gives notice of the sale to:*

(A) the owner of record at the time of the sale; and

(B) any person with a substantial property interest of public record in the tract or item of real property.

(d) The person required to give the notice under subsection (a), (b), or (c) *shall give the notice by sending a copy of the notice by certified mail, return receipt requested*, to:

(1) the *owner of record* at the time of the:

(A) sale of the property;

(B) acquisition of the lien on the property under IC 6-1.1-24-6; or

(C) sale of the certificate of sale on the property under IC 6-1.1-24;

at the last address of the owner for the property, as indicated in the records of the county auditor; and

(2) *any person with a substantial property interest of public record at the address for the person included in the public record that indicates the interest*.

However, if the address of the person with a substantial property interest of public record is not indicated in the public record that created the interest and cannot be located by ordinary means by the person required to give the notice under subsection (a), (b), or

> (c), the person may give notice by publication in accordance with IC 5-3-1-4 once each week for three (3) consecutive weeks.[4]

(emphasis added).

[26] Petrovski was required to give notice to: (1) the owner of record at the time of the sale; and (2) any person with a substantial property interest of public record in the tract or item of real property. We begin by noting that the trial court found Lloyd was not a "person with a substantial property interest of public record" regarding the Vacant Lot. We agree. Indiana Code Section 6-1.1-23.9-3 defines "substantial property interest of public record" and provides:

> (a) "Substantial property interest of public record" means title to or interest in a tract that is within the tract's chain of record title and:
>
> (1) possessed by a person; and
>
> (2) either:

---

[4] We note that:

> Prior to 2001, Indiana Code Section 6-1.1-25-4.5 provided in relevant part that "if the address of the owner or person with a substantial property interest of public record upon diligent inquiry cannot be located by the purchaser . . . notice may be given by publication. . . . But the 2001 amendment resulted in two substantive changes to the notice requirements: (1) only "ordinary means," not "diligent inquiry," need be used to obtain a proper address; and (2) a purchaser need use ordinary means in obtaining the address of a person with a substantial property interest of public record, but not in obtaining the same for the owner of record. *Since the 2001 amendment, nothing in the statute requires a tax sale purchaser to notify an owner of record by any means other than by certified mail to the address maintained by the county auditor's office*.

Oliverio v. Chumley, 817 N.E.2d 660, 663 (Ind. Ct. App. 2004) (emphasis added).

> (A) recorded in the office of the county recorder for the county in which the tract is located; or
>
> (B) available for public inspection and properly indexed in the office of the circuit court clerk in the county in which the tract is located;
>
> not later than the hour and date a sale is scheduled to commence under IC 6-1.1-24.
>
> The term does not include a lien held by the state or a political subdivision.
>
> (b) For purposes of IC 6-1.1-24 and IC 6-1.1-25 only, chain of record title includes instruments executed by the owner and recorded within the five (5) day period before the date the owner acquires title to the tract.

[27] Despite Leland's death, the Vacant Lot was never transferred out of his name, and Lloyd and Leland's other siblings did not obtain title to the Vacant Lot or an interest in the Vacant Lot evident in the chain of record title. Accordingly, under the statutory provisions, despite Leland's death and Lloyd's apparent status as an heir, Lloyd was not entitled to receive the 4.5 Notice.

[28] Pursuant to Indiana Code Section 6-1.1-25-4.5, Petrovski was required to send Leland, the record owner of the Vacant Lot, notice by certified mail at the last address of the owner for the property, as indicated in the records of the county auditor. Although Leland was deceased, Petrovski was not statutorily required to search out that information. *See, e.g., Flowers*, 547 U.S. at 235-36, 126 S. Ct.

at 1719 ("Jones believes that the Commissioner should have searched for his new address in the Little Rock phonebook and other government records such as income tax rolls. We do not believe the government was required to go this far. . . . An open-ended search for a new address—especially when the State obligates the taxpayer to keep his address updated with the tax collector, . . . imposes burdens on the State significantly greater than the several relatively easy options outlined above."). The auditor's records still indicated that the Vacant Lot was owned by Leland and indicated that Leland's address was the Dallas Street Property. Here, we have a deceased taxpayer and no updated address for notice purposes.

[29] The 4.5 Notice sent to Leland at the Dallas Street Property address by certified mail was returned as "attempted not known unable to forward." Exhibit Vol. p. 25. The United States Supreme Court has held that, "knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice." *Flowers*, 547 U.S. at 230, 126 S. Ct. at 1716. Here, Attorney Marshall took those additional steps. Although the certified mail was ineffective, Attorney Marshall also sent the 4.5 Notice to Leland at the Dallas Street Property address by first-class mail. The 4.5 Notice sent to the Dallas Street Property by first-class mail was not returned. *See, e.g.*, *Indiana Land Tr. Co.*, 155 N.E.3d at 1189 ("One could reasonably assume the unreturned first-class mail in this case indicated to the Auditor that the mail was received by the intended recipient."). It is undisputed that Leland's mail was being forwarded to Lloyd and that Lloyd was not

opening Leland's forwarded mail. Rather, Lloyd was simply throwing the mail away. Under these circumstances, we conclude that Petrovski substantially complied with the notice requirements for the 4.5 Notice.

[30] The trial court found that Windy City did not substantially comply with the notice requirements because Windy City failed to present evidence that the 4.5 Notice was sent to Leland by certified mail at the Burr Street address. Attorney Marshall testified that he sent the 4.5 Notice to Leland at the Burr Street address. The post office documentation provided by Attorney Marshall, however, does not indicate that Attorney Marshall sent the 4.5 Notice to Leland at the Burr Street address by either certified mail or first-class mail. We do not find that sending notice to Lloyd's address was statutorily or constitutionally required in this case. Indiana Code Section 6-1.1-25-4.5 did not require Attorney Marshall to search out this additional address. Substantial compliance with the statutory notice requirements did not necessitate that Attorney Marshall send an additional 4.5 Notice to Leland at Lloyd's Burr Street address. *See Indiana Land Tr. Co.*, 155 N.E.3d at 1189 ("While the Auditor certainly could have done more, the Constitution does not require more than the actions taken in this case."). Accordingly, the trial court's finding regarding the 4.5 Notice was clearly erroneous.

[31] Moreover, although we find Petrovski substantially complied with the notice requirements, we note that the trial court took issue with the posting of the 4.5 Notice. Because the certified mail to the Dallas Street Property was unable to be delivered, Petrovski also posted the notice in front of the chain link fence

along Dallas Street on August 13, 2019. The trial court's findings on the posting of the notices, however, are unclear.

[32] The trial court first found that "[n]o evidence was submitted nor was testimony given that the 4.5 Notice was posted on 5820-35 W. 29th Street, the subject property." Appellant's App. Vol. II p. 13. Lloyd testified that the notice was placed on the Dallas Street Property, not the Vacant Lot. A surveyor, however, testified that the 4.5 Notice was placed on the Vacant Lot. Petrovski testified that he posted the 4.5 Notice on the Vacant Lot. Further, photographs of the posted 4.5 Notice compared to the survey admitted into evidence appear to show that the notice was posted on the front of the Vacant Lot along Dallas Street or at least very close to the property line between the Vacant Lot and the Dallas Street Property. We concede, however, that we cannot reweigh the evidence as to whether the notice was posted on the Vacant Lot. The important question to ask when we have such conflicting evidence is whether the posting was likely to give notice to the interested parties.

[33] Next, the trial court also concluded: "[W]hen noticing is done on a vacant parcel of land, it is considered suspicious noticing. The Indiana Supreme Court in *Ind. Land Tr. Co. v. XL Investment Properties, LLC* also observed that posting notice on bare, unimproved land was not practical. The same is true in this case." *Id.* at 22. If the notices were posted on the Dallas Street Property, as the trial court found, then the notices were not posted on the Vacant Lot. Moreover, even if the notices were posted on the Vacant Lot, we disagree with the trial court's reasoning. Our Supreme Court observed in *Marion County*

Auditor v. Sawmill Creek, 964 N.E.2d 213, 221 (Ind. 2012), that posting a notice on a "four acre tract" of "unimproved, bare land" was "a suspect form of notice." Here, however, the Vacant Lot was merely a ten-foot-wide strip of land immediately adjacent to a residence, and the Vacant Lot was part of the residence's yard. Regardless of whether the notice was posted on the Vacant Lot or a few inches away on the Dallas Street Property, the posting, which listed the property's address and legal description, was likely to give notice to interested parties. Given the close proximity of the Vacant Lot to the residence, the instant circumstances stand in stark contrast to the scenario in *Sawmill Creek*. The posting of the notice here was not "a suspect form of notice." *Id.*

[34] Regardless, given the other notice provided by Petrovski, the posting of the notices was not statutorily or constitutionally required. We note that, "while all 'essential acts' concerning the tax sale must be properly performed, substantial compliance with the statutory procedures will satisfy the due process requirements." *Pinch-N-Post, LLC v. McIntosh*, 132 N.E.3d 14, 21 (Ind. Ct. App. 2019)) (quoting *Anton v. Davis*, 656 N.E.2d 1180, 1183 (Ind. Ct. App. 1995), *trans. denied*). Under these circumstances, we conclude that Petrovski substantially complied with the notice requirements of Indiana Code Section 6-1.1-25-4.5. Accordingly, the trial court's finding of a lack of substantial compliance is clearly erroneous.

II. 4.6 Notice

[35] Windy City also challenges the trial court's determination that it failed to substantially comply with the 4.6 Notice requirements. Indiana Code Section 6-1.1-25-4.6(a) provides in relevant part:

> After the expiration of the redemption period specified in section 4 of this chapter but not later than three (3) months after the expiration of the period of redemption:
>
> (1) the purchaser, the purchaser's assignee, the county executive, the county executive's assignee, or the purchaser of the certificate of sale under IC 6-1.1-24-6.1 may; or
>
> (2) in a county where the county auditor and county treasurer have an agreement under section 4.7 of this chapter, the county auditor shall, upon the request of the purchaser or the purchaser's assignee;
>
> file a verified petition in accordance with subsection (b) in the same court in which the judgment of sale was entered asking the court to direct the county auditor to issue a tax deed if the real property is not redeemed from the sale. *Notice of the filing of this petition shall be given to the same parties as provided in section 4.5 of this chapter, except that, if notice is given by publication, only one (1) publication is required. The notice required by this section is considered sufficient if the notice is sent to the address required by section 4.5(d) of this chapter.* Any person owning or having an interest in the tract or item of real property may file a written objection to the petition with the court not later than thirty (30) days after the date the petition was filed. If a written objection is timely filed, the court shall conduct a hearing on the objection. If there is not a written objection that is timely filed, the court may consider the petition without conducting a hearing.

[36] Here, Rich Zeigler, authorized agent of Windy City, testified that he spoke with Lloyd in Lloyd's driveway at the Burr Street address sometime after September 19, 2019 (when the redemption period expired), and learned that Leland was deceased. Petrovski assigned the tax sale certificate for the Vacant Lot to Windy City on December 11, 2019. Windy City also purchased the Dallas Street Property in December 2019 and the property on the other side of the Vacant Lot.

[37] On December 16, 2019, Windy City filed a verified petition for a tax deed. On December 17, 2019, Windy City sent the notice of filing for tax deed required by Indiana Code Section 6-1.1-25-4.6 ("4.6 Notice") to Leland at the Vacant Lot's address, the Dallas Street Property address, and the Burr Street address by first-class mail and by certified mail. The certified mail sent to the property's address was returned as "no such street unable to forward", the certified mail sent to the Dallas Street address was unclaimed, and the notice sent to the Burr Street address was returned as "insufficient address unable to forward." Exhibit Vol. pp. 47, 55, 65.

[38] Also, on December 20, 2019, Windy City posted the notice in front of the chain link fence along Dallas Street, slightly to the right of the residence. Lloyd testified that he saw the notice sometime after October 1, 2019, but he did not stop to read the notice. Photographs of the posted 4.6 Notice compared to the survey admitted into evidence appear to show that the notice was posted on the front of the Vacant Lot along Dallas Street. Because none of the certified mailings were effectuated, Windy City then re-sent the 4.6 Notices by certified

mail, and on January 18, 2020, Lloyd received and signed for the certified mail that was addressed to Leland at the Burr Street address.

[39] The trial court, however, found that the 4.6 Notice provided by Windy City failed to substantially comply with the statutory and due process requirements. The trial court does not appear to take issue with Windy City's mailing of the 4.6 Notices; rather, the trial court takes issue with the posting of the 4.6 Notice for the same reasons as the 4.5 Notices.

[40] Indiana Code Section 6-1.1-25-4.6(a), however, required Windy City to provide the 4.6 Notice to the same parties at the same addresses provided with the 4.5 Notice. Windy City did so. Moreover, given that Windy City was aware at the time of providing the 4.6 Notices that Leland was deceased and was aware of Lloyd, Windy City properly provided Leland with the 4.6 Notices at Lloyd's Burr Street address by certified mail and first-class mail, which provided Lloyd with actual notice.[5] Under these circumstances, regardless of the posting of the 4.6 Notice, we conclude that Windy City substantially complied with the notice requirements of Indiana Code Section 6-1.1-25-4.6(a). Accordingly, the trial court's finding of a lack of substantial compliance is clearly erroneous.

[5] Neither of the parties specifically raises the issue of what notice is required where the taxpayer is known to be deceased throughout the tax sale proceedings. Accordingly, we do not address that issue. It is undisputed here that Leland's brother, who was one of his heirs, received actual notice of the proceedings through the 4.6 Notice.

[41] We acknowledge that the notice requirements of Section 4.5 and 4.6 are complicated when the taxpayer is deceased and the tax records have not been updated. Sending notices to the property and a decedent's last known address may not guarantee actual notice. Actual notice, however, is not required, and Windy City's additional posting of the notice on the property itself compels us to conclude that, under these circumstances, Windy City complied with the notice requirements.

Conclusion

[42] Windy City and its predecessor, Petrovski, substantially complied with the notice requirements of Indiana Code Section 6-1.1-25-4.5 and Indiana Code Section 6-1.1-25-4.6. Accordingly, we reverse the trial court's judgment and remand for proceedings consistent with this opinion.

[43] Reversed and remanded.

Najam, J., and Pyle, J., concur.